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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/895,011	06/28/2001	Louis Morrison III	026735-00004 (068.0003)	3672
7590	06/06/2006		EXAMINER	
Erik B. Cherdak Arent Fox 1050 Connecticut Avenue, Suite 400 Washington, DC 20036				BORISSOV, IGOR N
			ART UNIT	PAPER NUMBER
				3639

DATE MAILED: 06/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/895,011	MORRISON ET AL.	

Examiner	Art Unit	
Igor Borissov	3639	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 9/27/2006.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-21 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Claims Objections

Claims Objections have been withdrawn due to the applicant's amendment.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-10 are rejected under 35 U.S.C. 102(e) as being anticipated by McCall et al. (US 6,321,984).

McCall et al. teach a method and system for adjustable price fuel dispensing, comprising:

Claim 1. At the server (204) (Fig. 8), having database storing data related to fuel transactions, calculating price based on said data related to fuel transactions in accordance with a predetermined pricing technique (column 8, lines 19-36, 55-62; column 9, lines 1-19);

at a client facility coupled to said server (204), permitting a user to enter said data related to a fuel transaction for processing and generating pricing data at said server (204) (column 8, lines 19-36);

permitting said fuel to be sold and distributed to a customer based on said generated pricing data (column 8, lines 32-36).

Also, McCall et al. teach said method and system, wherein:

Claim 2. Said server (204) and the client facility are connected via the Internet (column 9, lines 15-19).

Claim 3. Use of the Internet inherently indicates use of standards based

protocols.

Claim 4. Said server (204) includes a database (206) for storing said data related to fuel transactions (column 8, lines 23-25).

Claim 5. Said server (204) is configured to automatically generate said pricing data (column 8, lines 59-62).

Claim 7. Said client facility is remotely located from said server (204), and provides data to said server (204) for generating pricing data (column 4, lines 9-10; column 8, lines 26-28; column 9, lines 2-3).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over McCall et al.

Claim 10. McCall et al. teaches all the limitations of claim 10, including calculating fuel price based on said data related to fuel transactions (column 8, lines 19-36, 55-62; column 9, lines 1-19), except that said calculation is implemented as a software module.

Official notice is taken that modular design is well known in software designing, wherein a project is broken into smaller units, or modules, each of which can be developed independently.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify McCall et al. to include that said calculation is implemented as a software module, because it would allow to upgrade this software module in future without having to change all software, thereby keeping cost of the

system maintenance down.

Claims 6, 9 and 11-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCall et al. in view of Narumo (US 2002/0099636).

Claim 6. McCall et al. teach said method and system, wherein said server (204) is configured to be accessed by a plurality of other clients (column 8, lines 26-28).

However, McCall et al. do not specifically teach that said server (204) is configured to be accessed by a plurality of other clients simultaneously.

Narumo teaches a computer-implemented method and system for stock investment timing, said system comprising a server and a plurality of clients, wherein the server is configured to provide access to as many clients simultaneously, as possible (0071).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify McCall et al. to include that said server is configured to be accessed by a plurality of other clients simultaneously, as taught by Narumo, because it would advantageously allow said other clients to participate in the transaction without delay.

Claim 9. Narumo teaches said computer-implemented method and system, wherein statistical tools are used for pricing calculations [0071]; [0027]; [0031]; [0038]; [0042].

Claim 11. See reasoning applied to claim 1 and claim 9.

Claim 12. See reasoning applied to claim 2.

Claim 13. See reasoning applied to claim 3.

Claim 14. See reasoning applied to claim 4.

Claim 15. See reasoning applied to claim 5.

Claim 16. See reasoning applied to claim 6.

Claim 17. See reasoning applied to claim 7.

Claim 19. See reasoning applied to claim 9.

Claim 20. See reasoning applied to claim 10.

Claim 21. Ability of said client facility to access the server over the Internet in McCall indicates providing a graphical user interface to said user of said client facility.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over McCall et al. in view of Nicholson (US 2001/00496263).

Claim 8. McCall et al. teach said method and system, wherein prices for fuel are calculated based on prior transactions (column 9, lines 2-4).

However, McCall et al. do not specifically teach that said prior transactions are fuel prior transactions.

Nicholson teaches a method and system for increasing fuel sales at a fuel service station, wherein if a customer purchases a predetermined amount of fuel, the customer receives a discount on future fuel purchase (0009).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify McCall et al. to include that prices for fuel are calculated based on prior fuel transactions, as taught by Nicholson, because it would advantageously allow to stimulate customers to purchase more fuel in order to get a discount for said fuel, thereby increase revenue.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over McCall et al. and Narumo in view of Nicholson.

Claim 18. See reasoning applied to claim 8 and claim 11.

Response to Arguments

Applicant's arguments filed 9/27/2006 have been fully considered but they are not persuasive.

Applicant argues that McCall fails to disclose that said pricing data is generated based on purchased fuel.

In response to applicant's argument that the reference fails to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., pricing data is generated based on purchased fuel) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Furthermore, Examiner points out that independent claims 1 and 11 do not provide any indicating that the "fuel deal" includes purchased fuel. Nowhere in the claims explicitly stated that fuel has to be purchased. The relevant language of the claims recites only "fuel deal".

Merriam-Webster's collegiate dictionary, 10th ed., p. 296, provides the following definitions of the term deal: "BARGAIN"; "PACKAGE DEAL"; "AN ARRANGEMENT FOR MUTUAL ADVANTAGE". Therefore, under the "broadest reasonable interpretation" Examiner understands the phrase: "fuel deal data" as information related to the *discount on fuel purchases*. Accordingly, Examiner understands the phrase: "a predetermined pricing technique" as rules specifying a value of the discount to be applied to the purchase of fuel, and how and when said discount should be applied.

In response to applicant's argument that McCall et al. fails to disclose steps: "at a server facility, storing store fuel deal data, and processing said fuel deal data to automatically generate pricing data based on said fuel deal data and in accordance with a predetermined pricing technique.", Examiner stipulates that McCall explicitly discloses said feature. Specifically, McCall teaches that a plurality of fuel dispensers and a plurality of participating stores are interconnected via the Internet with a central server 204, which provides a control signal output including the generated unit price discount

offered to the customer to each of the fueling point product select positions, i.e. regular, premium, etc. (McCall; C. 8, L. 55 – C. 9, L. 15).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Igor Borissov whose telephone number is 571-272-6801. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Hayes can be reached on 571-272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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5/23/2006



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PRIMARY EXAMINER